

This letter determines that an educational institution that provides optometry services as part of its curriculum does not incur tax on the transfer of tangible personal property incident to the providing of that service. See generally 86 Ill. Adm. Code 130.2005. (This is a PLR.)

August 25, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/LegalInformation/regs/part1200/>), is in response to your letter of December 4, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing you to request a Private Letter Ruling ('PLR'), pursuant to 2 Ill. Admin. Code Sec. 1200.110, addressing the sales and use taxability of prescription eyeglasses sold to patients through a clinic operated by a non-profit organization organized exclusively for educational purposes. PLRs respond to inquiries made by taxpayers or their representatives under power of attorney (attached). Further, we understand that PLRs discuss tax principals or applications and are binding on the Illinois Department of Revenue ('the IDOR') to the extent that the material facts of the situation and the applicable laws remain unchanged.

FACTS

AAA is a non-profit corporation organized under Illinois law and is licensed by the State of Illinois to teach the practice of optometry. The AAA is organized and operated exclusively for educational purposes and has been issued an exemption number by the IDOR. As part of its State required curriculum each student must spend a number of hours studying the clinical phases of optometry. To this end, the College set up an eye examination clinic where optometry students give optical examinations and prescribe corrective lenses. The patient, after purchasing the prescription eyeglasses, continues as a patient of the clinic for periodic treatment, consisting in part of lens fitting and adjustment. For the most part, the clinic's patients cannot afford the high fees charged by private optometrists and oculists. Thus, while the clinic is primarily necessary to the College's educational purpose, it serves the dual function of giving patients superior treatment at the most reasonable charge. Faculty supervision of student examinations ensures superior care.

The AAA is a registered Illinois retailer. It collects and remits ROT on sales of property to its students made through its college bookstore.

ISSUES

1. Does the AAA incur Retailers' Occupation Tax or Service Occupation Tax on its sale of prescription eyeglasses to patients at its teaching clinic?
2. Are purchases of materials (i.e. lenses, frames, etc.) which are transferred to patients subject to tax?

STATEMENTS

AAA is neither under audit nor subject to litigation regarding the issues discussed in this letter. The Illinois Department of Revenue issued a private letter on this issue on April 11, 1963 which is enclosed. Pursuant to Illinois Department of Revenue Reg. Sec. 1200.110(e), as of July 1, 2002, every letter ruling is revoked ten years after the date of issuance. We are therefore requesting a new ruling on this issue.

DISCUSSION

Law

Illinois Imposes a Retailers' Occupation Tax ('ROT') on persons engaged within the state in selling tangible personal property at retail. *35 ILCS 120/2*.

Illinois imposes a one percent tax on sales of medical appliances. *86 Ill. Reg. § 130.310(c)(2) and 140.126(b)*. Prescription eyeglasses fall within the definition medical appliances. *Id.*

Illinois also imposes a Service Occupation Tax ('SOT') on servicepersons who transfer tangible personal property incident to making a sale of service in the state. *35 ILCS 115/3*. A Service Use Tax ('the SUT') is imposed on the use of tangible personal property acquired as an incident to making the sale of a service in the state. *35 ILCS 110/3d*.

Optometrists are primarily engaged in the sale of a service and are thus treated as servicepersons and do not incur ROT on their receipts from sales of prescription eyewear. *86 Ill Admin. Code 130.1980*. See also *Information Bulletin, FY 91-54 (June 1991)*. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. The purchase of tangible personal property that is transferred to the service customer results in SOT liability on the servicemen's cost price of materials transferred for a de minimus servicemen required to be registered as a retailer. *86 Ill Admin Code 140.106, 140.108, and 140.109*.

Sales to or by an exclusively charitable, religious, or educational corporation, society, association, foundation, or institution are generally subject to ROT with the exception of sales to members, students (but not sales of school supplies, school books, clothing, or furniture by schools to students), patients, or inmates primarily for purposes of the

selling organization. *86 Ill Admin. Code 130.120, 130.2005 and 150.325*. The Supreme Court of Illinois found that AAA was entitled to tax exemption. *Illinois College of Optometry v. Lorenz*, 21 Ill. 2d 219, 171 N.E.2d 620 (1961). Additionally, the AAA has an active exemption identification number issued by the Department of Revenue.

Sales or transfers of tangible personal property as an incident to the rendering of service to or by an exempt entity are exempt from SOT and SUT. *86 Ill Admin. Code 140.125*. To qualify for exemption, the charitable, religious, or educational organization must have an active exemption identification number issued by the Department of Revenue.

Analysis

We believe that the AAA will incur neither ROT nor SOT liability on its sales of eyeglasses by its teaching clinic.

Optometrists are generally considered to be engaged in professions and primarily render a service. Optometrists are therefore, not required to remit ROT on sales of services and property transferred incident to those services. Sales of medical appliances, such as prescription eyewear, that are transferred in conjunction with an optometrist's sale of service are subject to SOT or SUT and are taxed at the lower one-percent rate of tax.

The AAA has been issued an exemption number by the IDOR. Therefore, sales made to or by the AAA that would otherwise be subject to the SOT are not subject to tax. *86 Ill Admin. Code 140.125*. Eyeglasses are only furnished to AAA patients after an eye examination and consultation with the patient. Purchases are followed with routine adjustments and examinations. In this way, the clinic's sales should be treated the same as an optometrists -- namely, as transfers of tangible personal property incident to providing a service. Therefore, ROT does not apply to the sale of eyeglasses by the AAA because the sales are incident to the provision of services by the students and faculty of the clinic as a part of the AAA's educational program.

CONTRARY AUTHORITY AND DISCUSSION

We are unaware of any contrary authority to the Department's long-standing ruling in favor of the AAA.

IDENTIFICATION OF INFORMATION TO BE DELETED

We respectfully request that the IDOR delete the AAA's name from the publicly disseminated version of the PLR. Furthermore, any exhibits that list specific information about the college should be deleted.

CONCLUSION

Based on the foregoing, please confirm that the AAA's prescription eyeglass sales are exempt from Retailers' Occupation Tax, Use Tax and Service Occupation Tax.

We respectfully request that the IDOR send to us on behalf of AAA a PLR addressing the issue presented. Your cooperation is appreciated.

DEPARTMENT'S RESPONSE:

Section 2 of the Service Occupation Tax Act excludes the sale or transfer of tangible personal property as an incident to the rendering of service for or by certain organizations such as those that are organized and operated exclusively for educational purposes. 35 ILCS 115/2. We believe that the provision of ophthalmic examinations and the provision of prescription eyeglasses as part of the AAA's educational curriculum falls within the performance of its educational function. The transfer of tangible personal property incident to the providing of optometry services by the AAA is not subject to tax because the training of students to provide such services is part of the College's primary educational purpose. AAA would not incur either Retailers' Occupation Tax or Service Occupation Tax liability on the transfer of prescription eyeglasses incident to the providing of optometry services. The College may purchase the prescription eyeglasses, or the components for prescription eyeglasses, without incurring Use Tax or Service Use Tax liability.

However, the sale by the AAA of items that are not transferred incident to the providing of optometry services would be subject to Retailers' Occupation Tax liability. The items subject to tax would include such items as sunglasses, cleaning solutions for lenses, eyeglass cases, or any other tangible personal property apart from the rendering of optometry services. These items may be purchased by the AAA without incurring tax by providing its suppliers with a Certificate of Resale. See 86 Ill. Adm. Code 130.1405.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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